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No.: 061607 MAY 31 2007

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In The

Supreme Court of the United States

ABDELHADI ABUSHEIKH,
(Alien No.: 043-247-552)

Petitioner,

V.

ALBERTO GONZALES, ATTORNEY GENERAL; MICHAEL GARCIA, ASSISTANCE SECRETARY DEPARTMENT OF HOMELAND SECURITY-BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT; JAMES JOHNSTON, DISTRICT DIRECTOR BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT; BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Third Circuit Court of Appeals rendered a decision in this case which is inconsistent with our Constitutional principles of Equal Protection and Due Process.

The Honorable Court below did not address the relief sought by a stateless Palestinian national who cannot comply with an Order of Deportation because no country will accept him. Jordan and Israel will not issue him a travel document to depart the United States. He arrived in the United States 18 years ago with an Israeli travel permit which they refuse to renew. The Jordanians also refuse to issue Petitioner with a passport or a permit to travel eventhough he was born in Jordan. Since he lived in the occupied territory of the West Bank they will not recognize him as Jordanian.

The Court below avoided providing a remedy to the complex nature in this case. Further, their (Third Circuit) analysis in denying relief cited cases which are not relevant to the issue brought before the Court. They misunderstood the facts which is evident by virtue of the language contained in their analysis.

Three questions are presented:

1. Does the Equal Protection clause apply to undocumented individuals particularly where these individuals are unable to comply with a Deportation Order and are stateless?

2. Where a stateless undocumented individual under an order of deportation, cannot physically depart the United States, should Federal Courts intercede under the Equal Protection Clause and grant protection to that individual(s) despite the restrictions under the Immigration and Nationality Act?

3. Is the Due Process Clause violated where a undocumented person, without authority to travel outside the United States thereby violating an Order of Deportation and revocation of bond, subject to any relief that is not addressed within the Immigration and Nationality Act.

LIST OF PARTIES

The parties below are listed in the caption.

CORPORATE DISCLOSURE STATEMENT

Not applicable.

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OPINION BELOW

An Immigration judge denied Petitioner's request for relief from deportation by way of cancellation of removal (under § 240 of the Act) primarily because Petitioner did not file taxes while he lived as an overstay in the United States. The Immigration Court was not receptive to the fact that the Petitioner could not lawfully work in the United States. The Petitioner's family were not placed under removal proceedings. The Immigration judge designated Jordan, and in the alternative, Israel, as countries of removal. The Court also granted Petitioner voluntary departure upon posting of an additional bond. The Petitioner was a West Bank resident and is a Palestinian national.

When the Petitioner sought travel documents from both Israel and Jordan he was denied. The Israeli's consider him a Jordanian, while Jordan considers him to be an Israeli resident, primarily based on the length of his residency there. Due to these factors, motions to reopen immigration proceedings were filed and denied by both the Immigration judge and the Board of Immigration Appeals, claiming they had no jurisdiction.

A petition was filed in District Court of the Third Circuit but was transferred to the Third Circuit Court of Appeals following enactment of § 106 (c) of the Real ID Act of 2005, as a petition for review of the BIA's decision under 8 U.S.C. § 1252 (a). The opinion rendered by the Third Circuit Court of Appeals did not address the issues presented by the Petitioner in the petition filed, or even comment on the lack of a review on the part of the BIA to the Immigration judge's decision on the jurisdiction, and motion to reopen issues.

STATEMENT OF JURISDICTION

Constitutional protections are being denied to the Petitioner based on his ethnicity and due to diplomatic and political circumstances affecting and being beyond the control of a common individual.

CONSTITUTIONAL AND STATURORY PROVISIONS INVOLVED

THE IMMIGRATION & NATIONALITY ACT

The entire Immigration and Nationality Act does not address the question of what does an undocumented individual, who is considered stateless, do when they can not return to their homeland because of international, political, and diplomatic disputes, and as the result the individual consequently violates an order of deportation.

STATEMENT OF THE CASE

Petitioner Abdelhadi Abusheikh is a Palestinian national who cannot comply with an order of deportation entered by an immigration judge on February 21, 2003 because of his inability to secure travel documents from the countries of Israel and Jordan, the countries designated on the deportation order. Due to historical circumstances the Petitioner is tied to those countries.

When the Petitioner was a child his family was living in Amman, Jordan then they moved to the West Bank. While Petitioner was living in that area, the 1967 war erupted which resulted in Israel occupying or controlling the West Bank region of Jordan. The Petitioner grew up in the West Bank while under Israeli authority over the region.

On October 3, 1989 the Petitioner entered the United States with an entry visa stamped on his Israeli travel permit issued to him in Israel. Since his arrival he has not departed the United States. The Petitioner's wife and children eventually came to the United States as well, all under Israeli travel permits. The Israeli authority does not issue passports to Palestinians, only travel permits.

The Petitioner was arrested by Bureau of Immigration and Customs Enforcement (ICE) on March 14, 2002 and charged under the Immigration and Nationality Act, under section 237 (a)(i)(b) as being an overstay. He posted a $2, 700 Bond and was released from custody. Due to his length of residing in the United States, the Petitioner sought relief from deportation via cancellation of removal under Section 240 of the Act.

The Immigration judge denied the Petitioner's application for relief by way of Cancellation of Removal from the United States, primarily because the Petitioner did not file taxes annually, eventhough the Petitioner could not get legal permission to work while living in the United States. The Court was aware that the Petitioner had no criminal record, but looked beyond this equity and denied relief.

Subsequent to denial of his appeal by the BIA the petitioner attempted to procure travel documents from both Jordan and Israel but they refused to issue him any travel documents. The Jordanians provided written confirmation of their denial to issue travel permission. The Israelis refused to provide any written proof despite repeated requests for such proof by the Petitioner.

Due to the inability of the Petitioner to depart the United States without travel authorization, a motion to Reopen Removal proceedings was filed with both the Immigration judge and the BIA, both denied relief. They claimed that they lacked jurisdiction without providing a written opinion in support of their denial.

Upon making application to the Third Circuit Court, the petition was transferred to the Third Court of Appeals pursuant to the provisions of the Real ID Act. The opinion of the court below did not address the issues raised in the petition that was filed in District Court. The Court referred to cases in their opinion which did not address the issues at hand. The Court referred to facts in their opinion that were clearly misunderstood by the Court which did not permit the Court from accurately addressing the issues.

The first sentence of the opinion by the Court below indicates that the petition was due to "a review of the application for cancellation of removal". This is plainly incorrect. The issue was related directly to the Petitioner's inability to comply with the deportation order and the fact that he has been sanctioned by the revoking of two bonds he posted. Since he could not depart the United States and comply with the order, he was compelled to file a motion to reopen. The Court missed this critical factor. The Court was also factually incorrect when it stated in its opinion that "following his detention a petition for a stay of removal and a writ of Habeas Corpus was filed.....". (P. 3). This did not occur as well. This further supports the contention that the Court did not understand the issues and fact of this case.

At this time the Petitioner has literally no recourse but to pray that this Honorable Court will grant a forum to hear his plight and request for relief.

The Petitioner filed the notice of appeal on November 22, 2005. The Third Circuit's decision was entered on January 31, 2007.

The Petitioner timely filed a petition for panel rehearing with the Third Circuit Court of Appeals which was denied on March 5, 2007. This petition for request for Certiorari followed.

REASONS FOR ALLOWANCE OF THE WRIT

The Petitioner acted in accordance with the decision of the Immigration judge and complied with the law. He was granted voluntary departure which means the Petitioner can depart the United States on his own accord within a specified time frame. He posted two bonds which would be relinquished upon evidence that Petitioner departed the United States.

When the Petitioner sought to get a travel authorization from Israel he was denied. When he tried to get travel permission from Jordan he was denied as well. Since he did not depart from the United States timely, the Respondents have confiscated the bonds he was required to post, eventhough the Petitioner filed motions to reopen deportation proceedings indicating the reasons for his inability to comply with the deportation order and depart the United States.

Due process has been violated as no tribunal heard argument on the merits of Petitioner's inability to depart the United States. The Real ID Act dispensed with a hearing before a District Court judge or Federal magistrate on the facts of the Petitioner's case. The Third Circuit Court of Appeals in an inartful manner disposed of the prayer for relief filed by the Petitioner. This Honorable Court must act to protect the Petitioner from any further harm and violation of his constitutional rights.

There has been no Federal Judicial Review on the facts of this case. The Third Circuit Court of Appeals applied incorrect facts from the instant case to cited cases which resulted in error as is evident in their opinion.

Review by this Honorable Court is necessary to ensure Petitioner is afforded due process which has not occurred in this case.

I. REVIEW IS WARRANTED TO RESOLVE A CONFLICT ON THE DETERMINATION OF THE STATUS OF A STATELESS UNDOCUMENTED INDIVIDUAL UNABLE TO DEPART THE UNITED STATES.

A stateless individual ordered removed from the United States has no place to go. No judicial body has accepted this premise in the opinions they rendered in this case. The contention of the Petitioner is supported by evidence submitted in support thereof.

The United States constitution applies to undocumented individuals as well as to all citizens and residents of the United States. *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1986). This protection extends to stateless individuals as well. The concept of due process requires that all individuals under the protection of the constitution will be provided with a fair and impartial hearing. The Petitioner has been denied this right on the issue of his inability to depart the United States, based on the facts and circumstances of this case.

The Petition filed, and the supporting briefs filed in support thereof, were not remotely addressed by the Third Circuit Court of Appeals in their decision.

There are no statutes contained within the Immigration and Nationality Act which address circumstances in handling an individual in the Petitioner's situation. When this issue was presented to the Executive Office for Immigration Review they disclaimed jurisdiction. This was the same result with Immigration Court. They in essence push the matter of stateless individuals over to the Federal Court to resolve.

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the decision provides that detention by ICE of undocumented individuals is not an everlasting phenomenon. The case held that the Respondents cannot hold a person beyond a six month period to effectuate their removal from the United States. The difference with the matter at bar is that the Petitioner has given the Respondents evidence that he cannot return to his native land. They have not refuted this evidence. The

Respondents were well aware of the Petitioners circumstances for at least two years now. That time period exceed the time frame discussed as being acceptable in *Zadvydas*. Confiscation of the bonds posted by the Petitioner is not consistent with holding of *Zadvydas*. The Respondent's actions have become penal in nature to the Petitioner.

The refusal by the Immigration judge and the Board of Immigration Appeals to reopen the deportation proceedings for the Petitioner was an abuse of discretion. *Panjwani v. Ashcroft*, 401 F. 3d. 626, 628-632 (5th Cir. 2005). The Petitioner provided a certification on the impossibility of getting a travel document from Israel. The Petitioner's certification contains a letter from the Jordanian Embassy as well as evidence that Israel also refused Petitioners request for travel documents. Due process requires further review by a Court under these new and unique circumstances. Under these facts denial by the Court(s) below was a clear abuse of discretion.

The Middle District of Pennsylvania was confronted with a case that had similar facts, in *Abdel-Muhti v. Ashcroft*, 314 F. Supp. 2d. 418, 424 (M.D.P.A. 2004), the Court considered a case where a Palestinian could not return to Israel or Jordan. They were the only countries as well that could issue him travel documents. Since neither country would accept his return, the Court granted Mr. Abdel-Muhti's release from custody and granted him the right to live and work in the United States. The facts in Abdel-Muhti's case parallel the Petitioner's case because they both came to America while living in the occupied territories. Both were born while living on land that was Jordanian. Since they come from the occupied territories they cannot seek refuge in either country, both nations simply don't want Palestinians to live in their countries.

It is respectfully suggested that these factors show that a review should be warranted here. This case is particularly significant because there has been no hearing on the merits of the Petitioner's claim on his inability to depart the United States.

II. REVIEW IS WARRANTED AND NECESSARY TO RESOLVE THE ISSUE OF WHETHER A STATELESS INDIVIDUAL ORDERED DEPORTED AND BEING UNABLE TO DEPART CAN REOPEN IMMIGRATION PROCEEDINGS.

After being informed that Petitioner could not acquire a travel permit from either of the designated countries on the deportation order, a motion to reopen was filed. A motion was filed to reopen with both Immigration Court and with the Board of Immigration Appeals. Both Courts denied the motion claiming (without opinion) that their Court lacked jurisdiction.

Immigration Court should have addressed the status of stateless individuals who fall under Petitioner circumstances. The outcome of that process is not completed upon issuance of a deportation order. An extension thereto of the Court's functions is the departure of the individual from the United States, and where that is impossible, the judge who issued the order should review alternatives. It would only be fair and in comport with the due process clause of the Fifth Amendment to the United States constitution. Here the Immigration Court below avoids the issues completely claiming lack of "jurisdiction".

Upon being informed that the Petitioner could not depart the United States because of the stateless factor, the motion judge should have Sua Sponte interviewed. 8 C.F. R. § 1003.2 (a). They clearly have the authority to intervene but decided not to.

III. REVIEW IS NECESSARY TO RESOLVE AN IMPORTANT DISPUTE CONCERNING THE PROPER TREATMENT OF STATELESS INDIVIDUALS WHERE THE LAW IS SILENT.

We as a nation are a land of immigrants who came from all parts of the world. We have always been sensitive to the rights of immigrants. Numerous bills have been passed to accommodate an influx of displaced individuals. This petition does not relate to an entire group of people, only for one individual. This individual is now considered stateless because of a state of war between Israel and Jordan.

The Petitioner is also a Palestinian which further complicates his situation in the eyes of both countries. The Petitioner has not been afforded a hearing on the merits of his inability to depart the United States. This situation developed only after the Petitioner found out that he could not get travel documents to depart the United States.

Since the Immigration Courts did not permit motions to reopen to be filed, relief was sought in Federal Court. The Third Court of Appeals did not accurately analyze this case. We have no option but to present these facts before this Honorable Court.

We ask this Honorable Court to permit the Petitioner with an opportunity, as dictated by fundamental due process to have his case reviewed by a Federal Court.

CONCLUSION

For all the foregoing reasons, petitioners respectfully request that the Supreme Court grant review of this matter.

Dated: May 29, 2007

Respectfully submitted,

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